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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RICK STANFORD,

Plaintiff and Appellant,

v.

KEVIN MENG,

Defendant and Respondent.

G040578

(Super. Ct. No. 07CC05893)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Kazuharu Makino, Judge. Affirmed. Request for judicial notice. Denied.

Rick Standard, in pro. per., for Plaintiff and Appellant.

Jones & Mayer and Ivy M. Tsai for Defendant and Respondent.

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INTRODUCTION

In May 2007, Rick Stanford sued Costa Mesa Police Officer Kevin Meng for false arrest and false imprisonment based on Stanford's arrest on July 6, 1999 and resulting eight-day incarceration. The trial court sustained Meng's demurrer to Stanford's first amended complaint without leave to amend. Stanford appeals from the subsequent judgment of dismissal, and we affirm.

Stanford's claims against Meng arose out of his acts in the course and scope of his employment as a police officer. Therefore, timely presentation of a claim against Meng's employer, the City of Costa Mesa, and timely institution of a lawsuit after denial of the claim were a prerequisite to suing Meng. (Gov. Code, §§ 905, 905.2, 915, subd. (a), 945.4, 945.6, subd. (a)(1), 950.2.) (All further code citations are to the Government Code, except as noted). Stanford's claim against the City of Costa Mesa, presented in 2002, was untimely. His lawsuit against Meng, filed over four years after denial of Stanford's claim, was untimely too.

Meng has filed a request for judicial notice of court-filed documents in Stanford's lawsuit against Matt Olin, a Costa Mesa police officer, who, with Meng, arrested Stanford in July 1999. The documents in Meng's request for judicial notice are neither necessary nor relevant to our decision, and therefore the request for judicial notice is denied.

FACTS AND ALLEGATIONS

On July 3, 1999, a fire sprinkler was set off in the apartment rented by Stanford, flooding four units and causing extensive damage. Stanford was in the apartment at the time. The Costa Mesa Fire Department arrived, recovered the sprinkler keys that were missing from the apartment, and inspected the sprinkler head. The manager of the apartment complex submitted a vandalism report to the Costa Mesa Police Department.

On July 6, 1999, Costa Mesa Police Officers Kevin Meng and Matt Olin were dispatched to the apartment complex to speak with Stanford. While Olin spoke with Stanford, Meng telephoned Police Lieutenant Kent, who instructed Meng and Olin to arrest Stanford for violation of Penal Code section 594, former subdivision (b)(2) (vandalism causing damage of more than \$5,000 but less than \$50,000).

Meng and Olin arrested Stanford, and he spent eight days in jail. A one-count criminal complaint, filed on July 7, 1999, charged Stanford with violating Penal Code section 594, former subdivision (b)(2). That count was dismissed on January 4, 2000.

In 2000, Stanford sued the City of Costa Mesa, Meng, Olin, and others for false arrest and various other torts arising out of his arrest in July 1999. The trial court dismissed Stanford's complaint as a discovery sanction because Stanford failed to appear for a court-ordered deposition. In *Stanford v. City of Costa Mesa* (Dec. 3, 2002, G030129) [nonpub. opn.], we affirmed. Meng and Olin were not parties to the appeal.¹

On October 9, 2002, Stanford presented a claim to the City of Costa Mesa. The claim asserted it was based on an incident that occurred "July 3, 1999-June 2002," described as follows: "An intruder set my fire sprinkler to go off. I was arrested (8 days in jail). Investigation covered-up against Me – No warrant." The claim listed Meng and Olin among the public employees causing the injury, damage, or loss.

On October 25, 2002, the City of Costa Mesa denied Stanford's claim on the ground it was not presented within six months after the event. The claim denial was sent to Stanford by certified mail.

¹ Meng does not argue the dismissal is res judicata as to him because he was dismissed. Instead, he argues the dismissal was res judicata as to the City of Costa Mesa and thus to him. However, the dismissal of the City of Costa Mesa was not on the merits and therefore is not res judicata.

On May 14, 2007, Stanford filed a complaint against Meng, asserting a single cause of action for “False arrest with Imprisonment.” After the trial court sustained Meng’s demurrer to the complaint, Stanford filed a first amended complaint, a form complaint asserting causes of action for general negligence and intentional tort. The intentional tort cause of action asserted false arrest and false imprisonment in two parts. In the first part, Stanford alleged that Meng “has willfully and intentionally prevented the filing of a complaint by 1) knowing that information given in a police report was false and [Meng] contributed to it. . . . 2) never completing the investigation nor resolving the issues raised in the report. 3) Never clearing [Stanford] of possibly two charges while neither appears to be dismissed on a date . . . and [Stanford] was released from jail in error giving no date[.] . . . 4) using the report to assert a probable cause that was non existent.”

In the second part of the intentional tort cause of action, Stanford alleged Meng “falsely arrested [Stanford] and imprisoned him without a warrant for eight days after waiting three days to arrest.”

The general negligence cause of action alleged: “Due to [Meng]’s negligence of trying to investigate for the probable cause and requiring [Stanford] to be in jail or defending himself against accusations through October [Stanford] was unable to attend to his occupation that resulted from his graduation from a local public college that should have occurred before December 1999 and due to [Meng]’s negligence, [Stanford]’s graduation is extended indefinitely.” The general negligence cause of action also alleged that due to his arrest, Stanford was unable to care for an ailing relative and as a result lost the opportunity to live in the relative’s home.

The trial court sustained Meng’s demurrer to the first amended complaint without leave to amend, stating: “The first cause of action, assuming it is a claim for false imprisonment involving malice, fails for failure to file a timely tort claim related to this lawsuit and to sue within the statutory time after denial [of] the claim. Plaintiff

alleges that defendant's alleged wrongs were in connection with his 1999 arrest. Plaintiff previously alleged, and has alleged in the amended complaint, that all of the alleged wrongful acts were done within the scope of the officer[']s immunity under Govt. Code [section] 821.6." A judgment of dismissal was entered in April 2008, from which Stanford timely appealed.

DISCUSSION

1. *Failure to File Timely Tort Claim*

A person must present a timely claim to a local public entity before suing the local public entity for damages, except in specified circumstances not relevant here. (§§ 905, 905.2, 915, subd. (a), 945.4.) A claim relating to a cause of action for death or personal injury must be presented within six months after the accrual of the cause of action. (§ 911.2, subd. (a).) The date of accrual for purposes of the claim presentation requirement is the same date on which the cause of action would accrue for purposes of the statute of limitations in an action against a private party. (§ 901.)

A claim need not be presented as a prerequisite to maintaining a cause of action against a public employee for injury resulting from an act or omission in the scope of his or her employment as a public employee. (§ 950.) However, a cause of action against a public employee for injury resulting from an act or omission in the scope of his or her employment as a public employee is barred if an action against the employing public entity is barred under sections 900 through 935.8 or sections 945 through 949. (§ 950.2.) "Presentation of a claim against a public employee or former public employee for injury resulting from an act or omission in the scope of his public employment is not a prerequisite to the maintenance of an action against the employee, but presentation of a claim against the employing public entity is a prerequisite to bringing such an action." (*Olden v. Hatchell* (1984) 154 Cal.App.3d 1032, 1034.)

Stanford's intentional tort cause of action asserted false arrest and false imprisonment. A cause of action for false imprisonment or false arrest accrues upon

release from confinement. (*Scannell v. County of Riverside* (1984) 152 Cal.App.3d 596, 614; *Collins v. County of Los Angeles* (1966) 241 Cal.App.2d 451, 455.)

In his general negligence cause of action, Stanford alleged his arrest and incarceration prevented him from caring for a relative, living in the relative's home, and attending school. By Stanford's own allegations, such claims would have accrued no later than the date on which he was released from confinement. (See *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815 [cause of action ordinarily accrues when the wrongful act occurs, the liability arises, and the plaintiff is entitled to prosecute an action].)

In July 1999, Stanford was charged in a one-count criminal complaint with vandalism in violation of Penal Code section 594, former subdivision (b)(2). That count was dismissed on January 4, 2000. Stanford therefore must have been released from confinement on or before that date.

Stanford presented a claim to the City of Costa Mesa in October 2002. The claim was untimely because it was presented more than six months after January 4, 2000, the last day on which the causes of action alleged in the first amended complaint could have accrued.² As a result, Stanford's causes of action against the City of Costa Mesa, resulting from his arrest in July 1999, were barred, and, consequently, his causes of action against Meng are barred to the extent Meng acted within the course and scope of his employment as a public employee. (§ 950.2.)

All of Stanford's claims of injury against Meng arose out of Meng's acts or omissions in the course of his employment as a Costa Mesa police officer. Thus,

² A person who fails to present a timely claim may apply to the public entity for leave to present a late claim. (§ 911.4, subd. (a).) The application must be presented to the public entity "within a reasonable time not to exceed one year after the accrual of the cause of action." (§ 911.4, subd. (b).) Stanford did not apply for leave to present a late claim.

Stanford's causes of action against Meng are barred for failure to present a timely claim to the City of Costa Mesa.

2. Failure to File Timely Complaint after Denial of Tort Claim

Except in situations not relevant here, any lawsuit against a public entity on a cause of action for which a tort claim is required must be commenced not later than six months after the date on which written notice of denial of the claim is personally delivered or deposited in the mail. (§ 945.6, subd. (a)(1).)

On October 25, 2002, the City of Costa Mesa sent the claim denial to Stanford by certified mail. Stanford did not file his complaint against Meng until May 2007. The appellate record includes no evidence that Stanford filed suit against the City of Costa Mesa after October 25, 2002. His earlier lawsuit against the City of Costa Mesa does not satisfy the time limits of section 945.6, subdivision (a)(1) because it was filed before he presented a claim. Thus, any lawsuit against the City of Costa Mesa would be barred under section 945.6, subdivision (a)(1), and, consequently, the lawsuit against Meng is barred under section 950.2

DISPOSITION

The judgment is affirmed. Respondent to recover costs incurred on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.